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May 7, 1998

VIA FEDERAL EXPRESS

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of Powertel, Inc.
CC Docket No. 97-213

Dear Ms. Salas:

Transmitted herewith are an original and four copies of comments for association with the above-referenced proceeding.

Please date-stamp the enclosed "S&R" copy and return it to the undersigned in the self-addressed, pre-paid envelope included in this package.

Should any questions arise with respect to this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jill F. Dorsey".

Jill F. Dorsey
Vice President/General Counsel

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Communications Assistance for) CC Docket No. 97-213
Law Enforcement Act)

To: The Commission

COMMENTS OF POWERTEL, INC.

Powertel, Inc. ("Powertel") hereby respectfully submits its comments in the above-captioned proceeding in response to the Commission's Public Notice seeking comment on multiple petitions that, among other things, raise issues concerning the October 25, 1998, compliance deadline (the "Compliance Date") for the assistance capability requirements of Section 103 of the Communications Assistance for Law Enforcement Act ("CALEA").¹ 47 U.S.C. § 1002. As a broadband PCS and cellular licensee operating wireless telecommunications networks throughout the southeastern United States, Powertel is subject to the Section 103 requirements, and therefore, has a direct interest in the Commission's resolution of these issues.

I. Introduction.

Powertel has always cooperated with law enforcement in the conduct of electronic surveillance and remains committed to fulfilling its obligations under CALEA. Because CALEA's assistance capability requirements remain unachievable at this time, Powertel has filed a petition for extension of time, through October 24, 2000, to comply with those

¹ Public Notice, DA 98-762 (released April 20, 1998).

requirements.² Powertel anticipates that a large number of other wireless carriers, for the same reasons as Powertel, will petition the Commission for an extension of the Compliance Date.

For the reasons stated below, Powertel believes that a single order extending the Compliance Date for all wireless carriers would result in the most cost-effective and timely implementation of CALEA's assistance capability requirements.

II. An Extension of the Compliance Date is Warranted Because Wireless Carriers Cannot Reasonably Achieve Compliance With the Assistance Capability Requirements by October 25, 1998.

A. The Standard for Compliance With the Assistance Capability Requirements Is Unsettled.

As the Commission is well aware, although the industry has been diligent in the development of a CALEA assistance capability standard, the interim standard has been challenged by both law enforcement and privacy advocates. Law enforcement does not believe that the interim capability standard is adequate, and the privacy advocates believe the interim standard is overreaching.³ Due to this controversy, it now falls to the Commission to establish the necessary standard by rulemaking.⁴

Because of the highly technical nature of the standard, and considerations of adequate assistance to law enforcement versus privacy rights, it is unlikely that the Commission will be able to resolve the issues that have been raised in a time frame that would allow manufacturers and wireless carriers to develop and implement CALEA-

² Petition for an Extension of Time to Comply With the Capability Requirements of Section 103 of the Communications Assistance for Law Enforcement Act, filed by Powertel, Inc. (dated April 23, 1998).

³ Joint Petition for Expedited Rulemaking, filed by the Federal Bureau of Investigation and U.S. Department of Justice (dated March 27, 1998); Petition for Rulemaking, filed by the Center for Democracy and Technology (dated March 26, 1998).

⁴ 47 U.S.C. § 1006(b).

compliant technologies. Stated simply, without a final standard, there is no basis for determining whether assistance capabilities employed by the manufacturers and wireless carriers are truly CALEA-compliant. By definition then, not only is CALEA-compliance not reasonably achievable by October 25, 1998, compliance by that date is impossible.

B. CALEA-Compliant Hardware Or Software Will Not Be Available To Wireless Carriers By the October 25, 1998, Deadline.

Lucent and Ericsson, as well as other equipment suppliers, will not be able to provide CALEA-compliant technology to wireless carriers by the compliance date and for at least two years thereafter.⁵ Until equipment suppliers are able to provide CALEA-compliant technology, wireless carriers will not be able to fully comply with the assistance capability requirements and it is not reasonably achievable for them to do so. Specifically, without a final standard, wireless carriers do not have a benchmark by which to measure compliance. In addition, because of the significant expense, Powertel does not anticipate that equipment vendors will develop additional assistance capabilities until the final standard has been established. As such, because wireless carriers cannot comply with the assistance capability requirements of Section 103 through application of technology available within the compliance period, they are entitled to an extension under Section 107(c) of CALEA. See 47 U.S.C. § 1006(c)(1).

C. Additional Evaluation Criteria for Extensions under the Reasonably Achievable Standard.

In the Commission's rulemaking notice related to CALEA implementation, the Commission did not propose specific criteria for an evaluation of Section 107(c)

⁵ Petition for Extension of Compliance Date, filed by AT&T Wireless Services Inc., Lucent Technologies Inc., and Ericsson Inc. (dated March 30, 1998). Other equipment suppliers face the same difficulties as Lucent and Ericsson in the development of CALEA-compliant equipment.

extension requests.⁶ However, the Commission did propose to permit carriers to file for extensions under Section 107(c) using the specific criteria in Section 109 of CALEA.⁷ 47 U.S.C. § 1008(b)(1). Although not all of the Section 109 factors are relevant to wireless carriers' extension requests, a discussion of the effects of such extensions on: (1) public safety and national security; (2) competition and the provision of new technologies and services; and (3) the nature and cost of the equipment, facility of service at issue, and the financial resources of the telecommunications, may assist the Commission in its evaluation of such extension requests.

1. Public Safety.

The public safety and national security will not be compromised by the grant of an industry-wide extension. Members of the wireless industry are committed to continuing to provide law enforcement – pursuant to legal authorization – with the assistance capabilities present in their networks.⁸ Therefore, even though wireless carriers require an extension of time to obtain the technology to be fully compliant with Section 103 of CALEA, in further support of public safety and national security, wireless carriers will be able to continue to assist law enforcement within their present network capabilities.

2. Competition.

Failure to extend the CALEA deadline will have a substantial adverse impact on competition. Specifically, the Compliance Date relates to facilities, equipment and services constructed or implemented after January 1, 1995. Since most cellular systems

⁶ Notice of Proposed Rulemaking, CC Docket No. 97-213, ¶ 50 (released October 10, 1997).

⁷ Id.

were constructed prior to 1995, such systems are not subject to the deadline. However, since all broadband PCS systems were constructed after January 1, 1995, broadband PCS carriers may be subject to daily fines of \$10,000 per day per violation because they are unable to comply with Section 103 of CALEA. See 47 U.S.C. § 1007 and 18 U.S.C. § 2522. Under these circumstances, cellular carriers would have a significant competitive advantage over PCS carriers.

In addition, if wireless carriers' extensions are not granted, all carriers will be unable to introduce new services, or undertake upgrades of existing networks. Specifically, pursuant to CALEA, new services and major upgrades to networks must be CALEA-compliant. This means that, absent extensions for compliance, competition in the telecommunications marketplace will be halted because of the inability of manufacturers and carriers to comply with the CALEA compliance requirements. Such a significant impact on competition mandates that an industry-wide extension be granted.

3. Financial Resources of Carriers.

With respect to the nature and the cost of the equipment, facility or services at issue and the financial resources of the telecommunications carrier, until a CALEA standard is adopted, equipment manufacturers cannot develop CALEA-compliant technology. This means that no amount of money could bring the wireless carrier networks into compliance by the Compliance Date.

III. The Commission Must Expressly Toll Actions and Penalties While It Resolves the Issues Raised in the Petitions.

Without a standard, by definition, no system will be capable of being CALEA-compliant. However, the absence of a final assistance capability standard does not alone

⁸ Reply Comments of the Cellular Telecommunications Industry Association, CC Docket No. 97-213, ¶ 6

relieve carriers of their obligations under CALEA. This fact exposes carriers to significant risk because, as stated above, Section 108 of CALEA permits the Attorney General to seek an order in the Federal District Court to enforce CALEA and authorizes penalties of \$10,000 per day per violation. See 47 U.S.C. § 1007 and 18 U.S.C. § 2522. Because wireless carriers could be subject to enforcement actions and significant daily monetary forfeitures, for the reasons stated herein, Powertel expressly requests that the Commission toll CALEA compliance during the pendency of its review of the petitions under consideration in the event the Commission's evaluation of the petitions extends beyond the October 25, 1998, deadline.

IV. A Single Order Extending the Compliance Date Would Be the Most Efficient Way to Streamline the Process for Granting Extensions.

The Commission can most quickly and efficiently extend the compliance deadline, and streamline the process for granting extensions, through a single order extending the compliance date for all carriers.


As stated above, the Commission can expect a large number of extension requests from wireless carriers that are similarly situated to Powertel. Since all wireless carriers are equally affected by the lack of an approved standard and the associated delay in the development of CALEA-compliant equipment, the factors that support an extension for Powertel will apply equally to all wireless carriers. Processing carriers' extension requests on an individual basis, and requiring all carriers that have not yet filed such a request to do so, would result in a large administrative burden that can be best avoided by an industry-wide blanket extension.

A timely disposition of all extension requests is imperative for two reasons. First, the imminence of the October 25, 1998, deadline has required the parties involved to focus their efforts on the extension of that deadline. Once the deadline is extended, the Commission, the FBI and the wireless industry can focus on the implementation of a standard and on the development of equipment to meet that standard. This will ensure that the objectives and obligations of CALEA are met in the most timely manner. Secondly, as described above, failure to quickly resolve these issues will subject wireless carriers to enforcement actions and significant monetary penalties.

V. Conclusion.

For the reasons stated above, Powertel urges the Commission to issue a single order extending the compliance date for the assistance capability requirements of Section 103 of CALEA from October 25, 1998, to October 24, 2000.

Respectfully submitted,


Jill F. Dorsey
General Counsel/Vice President

POWERTEL, INC.

1233 O.G. Skinner Drive
West Point, Georgia 31833
May 7, 1998